IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 13812 of 2005

Between:

M/s. R.R. Poly Techs Ltd. Shed bearing No. 25(c), Survey No. 125,
I.D.A. Mallapur, Uppal, Rangareddy District rep by its Proprietor, K. Bhanu Prakash

..... PETITIONER

AND

1 Transmission Corporation of A.P. Ltd. (A.P. Transco) Rep by its Chief Managing Director, Vidyut Soudha, Khairatabad, Hyderabad.
2 The Superintending Engineer, Operation Circle, The Central Power Distribution Company of A.P. Ltd., (A.P. Transco) Gun Rock, Secunderabad.
3 The Assistant Divisional Engineer, Operation Circle, The Central Power Distribution Company of A.P. Ltd., (A.P. Transco) Nacharam, Rangareddy District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in insisting the petitioner to pay the arrears pertaining to M/s. Sai Shakthi Treads Pvt. Ltd. to the petitioner for the release of L.T. Category-III-A Power Supply to the petitioner as highly illegal, arbitrary, unjust and void.

Counsel for the Petitioner: MR. D.V.NAGARJUNA BABU

Counsel for the Respondent No.: MR.M.SRIRAMULU REDDY (SC FOR APTRANSCO)

The Court made the following :

:: ORAL ORDER ::

The petitioner is a lessee of an industrial shed bearing No.25(c), Sy.No.125,

admeasuring 700 Sq.Yds, at IDA, Mallapur, Uppal Mandal, RR District. For the purpose of industrial usage the petitioner applied on 3.5.2005 to the 3rd respondent (who is the concerned authority) for a LT Category-III electricity supply through the nodal agency, the District Industries Center, Balanagar. Till date no supply was made to him and it is being orally informed that he has to clear the dues of arrears of consumption and relevant charges incurred by one Sai Shakti Traders Pvt. Ltd., an earlier owner of the property, in an amount of Rs. 11,70,600. It appears that Sai Sakti Traders Pvt. Ltd., sold the property to M/s Satnam Industries, a proprietary concern under a registered sale deed dated 9.12.2004. M/s Satnam Industries had leased the property to the petitioner.

The writ petition is filed on the above grievance *inter alia* contending that u/Sec. 43 of the Electricity Act 2003 (for short 'the Act') on an application made for supply of electricity, the distribution licensee shall supply the electricity to the premises of the applicant within one month after receipt of the application. The proviso to Sec.43(1) is to the effect that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission. It is not the case of the respondents that the fact situation invokes the application of the proviso to Sub-sec.(1) of Sec.43. In the circumstances the respondents are statutorily obligated to release supply within 30 days from 3.5.2005. They have however not done so, is the substance of the complaint of the petitioner.

Responding to the writ petition the 3rd respondent has filed a counter affidavit on behalf of the other respondents also. To the extent relevant and material the counter affidavit avers that the original owner M/s Sai Shakthi Traders availed the power supply from the year 2000 and incurred arrears from June 2002 onwards in a sum of Rs.11,70,600/- upto January 2005 and that the husband of the petitioner's lessor proprieterix of M/s Satnam Industries, made a representation to the official respondents dated 27.12.2004 informing that he had entered into an agreement with the earlier owner M/s Sai Shakthi Pvt. Ltd., for purchase of land and buildings and have agreed that he would clear all the arrears of electricity before executing the sale deed of the above property. The counter affidavit further avers that the lessee's husband had however not cleared the arrears and therefore the petitioner is not entitled for supply of energy or release of connection.

In ***Ahmedabad Electricity Co., Ltd., v Gujarat Inns Pvt. Ltd., and other ()***, a case arising under Sec.24 of the Indian Electricity Act, 1910, which is substantially a similar provision to Sec.43(1) of the Electricity Act, 2003, the Supreme Court held that in case of fresh connection though the premises are the same, the purchaser of that property cannot be held liable to clear the arrears incurred by the previous owners in respect of the power supplied to the premises, in the absence of there being a specific statutory provision in that regard. The decision reiterated an earlier decision of the Supreme Court in ***Isha Marbles v Bihar State Electricity Board and another ().***

Neither the counter affidavit nor the learned Standing Counsel for the respondent-Corporation have an answer to the position in law. The only defence appears to be that since they have the power to release the power supply, they have the power to withhold the same.

Such an assertion, explicit or implied, is misconceived as is the defence. Accordingly the writ petition is allowed. The respondents are directed to release supply of power in favour of the petitioner pursuant to its application dated 3.5.2005 for LT Category-III within three days from the date of the petitioner paying all the necessary charges for the release of connection, if not already paid. If the charges are already paid, the respondents shall release the connection within three days.

As denial of power supply to the petitioner is without just cause and on an irrational basis, the writ petition is allowed with costs quantified at Rs. 1,000/- (Rupees One thousand only).

Dated: 04.07.2005 ----------

Pvsn Justice G. Raghuram

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Chief Managing Director, Transmission Corporation of A.P. Ltd. (A.P. Transco)Vidyut Soudha, Khairatabad, Hyderabad.
2 The Superintending Engineer, Operation Circle, The Central Power Distribution Company of A.P. Ltd., (A.P. Transco) Gun Rock, Secunderabad.
3 The Assistant Divisional Engineer, Operation Circle, The Central Power Distribution Company of A.P. Ltd., (A.P. Transco) Nacharam, Rangareddy District.

4 Two CCs to the Standing Counsel for APTransco, High Court buildings, Hyderabad (OUT)

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